

**LAWFOYER INTERNATIONAL**  
**JOURNAL OF DOCTRINAL LEGAL**  
**RESEARCH**  
**(ISSN: 2583-7753)**

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Volume 2 | Issue 3

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2024

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# ANTI-BRIBERY AND ANTI-CORRUPTION LAWS: CORPORATE COMPLIANCE IN A GLOBAL MARKETPLACE

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## I. ABSTRACT

Bribery and corruption have long been widespread in business, causing financial losses and emotional distress for ordinary people. To combat these unethical practices, anti-bribery and corruption laws were introduced. These laws not only safeguard individuals from being exploited under the guise of business dealings but also protect companies and organisations from engaging in or accepting bribery.

Bribery and corruption lead to unjust treatment of people and businesses alike, distort competition, and raise costs. People and companies continue to try to bribe public authorities or affect the results of tender processes in an effort to gain the next contract or boost profitability.

- a) Anti-corruption and bribery laws have several important components. Act legally, morally, and in the public interest;
- b) Tolerate conduct that is unlawful, immoral, or violates human rights by clients, suppliers, or public officials with whom we deal;
- c) Refrain from accepting or offering bribes or engaging in corrupt activities;
- d) Uphold the highest standards of moral behavior globally, including striving to uphold the ten principles of the UN Global Compact (including anti-bribery).<sup>2</sup>

## II. MEANING OF BRIBERY AND CORRUPTION

Bribery and corruption are unethical practices often observed in businesses or public organizations. In these practices, one person offers money or other benefits to another who is expected to act impartially but instead acts unfairly due to greed, giving preferential treatment in return for the favour.

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<sup>2</sup> Anti-bribery and corruption, <https://kpmg.com/xx/en/about/governance/anti-bribery-and-corruption.html>, 18 Oct 2024

Bribery specifically involves the offering or receiving of money or gifts to influence decisions or gain favouritism. For instance, paying extra to a college administration office for admission selection, or offering money in government offices to carry out illegal activities or receive undue advantages, are common examples of bribery.

Corruption involves the misuse of power or influence for personal gain, often by exerting dominance over others to expedite tasks or ensure favourable outcomes. A common example of corruption is when a politician leverages their reputation or position for personal benefit, often exerting influence over disadvantaged individuals.

Corruption and bribery can also be seen within the legal system. For instance, when a lawyer accepts a bribe from one party to persuade the other to drop a case, or when a judge receives a bribe to deliver a biased verdict, these are clear examples of unethical behaviour in the courts.

Bribery and corruption can manifest in various ways, with different forms depending on the scale and the parties involved. Below are some of the common types of corruption:

### **A. Petty Corruption:**

This type of corruption involves low to mid-level public officials who abuse their authority for personal benefit. Typically, it involves small-scale bribes or favours in exchange for bypassing rules or speeding up processes. Small payments made by citizens to public officials in order to bypass bureaucratic procedures or get entitlements to public services are referred to as petty bribery. Petty corruption, while usually involving small sums of money, has a detrimental long-term effect on sustainable economic growth, the general governance environment, the government's ability to collect taxes, and the rule of law. It also has a wide-ranging influence on citizens and enterprises.<sup>3</sup>

Example: A traffic police officer stops someone for not wearing a helmet (on a bike) or a seatbelt (in a car). Instead of issuing a formal fine, the officer accepts a small bribe

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<sup>3</sup> Marie Chêne, Successful approaches to tackle petty corruption, 18 July 2019, <https://knowledgehub.transparency.org/assets/uploads/kproducts/Fighting-petty-corruption-2019.pdf>

and lets the person go without issuing a ticket. While the bribe may seem minor, it can lead to serious consequences. If reported, the officer could face disciplinary action, such as suspension.

Another example of petty corruption is seen in schools or colleges. Here, parents may bribe the admissions officer to secure a spot for their child, bypassing mandatory entrance exams. This undermines fairness, as students who worked hard to pass the exam are unfairly disadvantaged

### **B. Grand Corruption:**

Grand corruption is the word used to characterize high-level corruption involving powerful people, politicians, or top government officials who participate in widespread corrupt activities. It usually involves bribes, kickbacks, or other unlawful financial transactions, as well as the embezzlement or misappropriation of public monies.

Grand corruption occurs when high-ranking officials misuse their power or influence for personal or political gain. It usually involves larger sums of money and has more far-reaching consequences, as it undermines institutions and systems of governance<sup>4</sup>.

Example: A senior government official, or someone connected to them, getting caught breaking the law (e.g., not wearing a helmet), but instead of facing penalties, the official uses their position to avoid fines or legal consequences. The officer responsible for issuing the ticket may be pressured to drop the case.

Another grand corruption seen in the US, the Watergate scandal lasted from 1972 to 1974. High-ranking American government officials were implicated in the Watergate scandal in unlawful acts such as wiretapping, burglary, and bribes to discredit political rivals. President Richard Nixon resigned as a result of this incident.<sup>5</sup>

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<sup>4</sup> Mr Edwards, Grand Corruption: An Outline and Explanation in Sociology, April 3, 2024, <https://easysociology.com/sociology-of-crime-deviance/grand-corruption-an-outline-and-explanation-in-sociology>

<sup>5</sup> Mr Edwards, Grand Corruption: An Outline and Explanation in Sociology, April 3, 2024, <https://easysociology.com/sociology-of-crime-deviance/grand-corruption-an-outline-and-explanation-in-sociology>

### **C. Unconventional Corruption:**

This type of corruption refers to actions where a public official or employee pursues their personal interests at the expense of their professional duty. It often involves unethical behaviour, manipulation of processes, or violation of contracts to gain personal benefits. Occurs when a public official or member of the government does a certain activity with the purpose to enrich oneself personally rather than the general public. The lack of reciprocal ties is important because there isn't a direct exchange of goods or services between the parties. This type of corruption includes fraud, misappropriation, embezzlement, and betrayal of confidence.<sup>6</sup>

Example 1: A government employee committing fraud, misusing public funds, or deliberately breaching contracts to secure personal profits or benefits. This might involve manipulating bids, insider trading, or inflating costs for personal gain.

Example 2: A government agency was tasked with awarding a contract for infrastructure improvement. However, instead of choosing the most qualified company, the contract was given to a less competent one because the company bribed a government official to secure the deal.

### **D. Corrupt Payments:**

This form of corruption is perhaps the most widely recognized and commonly experienced. It involves public officials demanding or accepting additional payments to expedite services or bypass standard procedures. These extra payments often end up in the official's personal account rather than being used for public purposes. When a business or private person gives gifts or cash to a public figure in return for preferential treatment, such as getting contracts or getting around rules. For example, it was discovered in 2008 that the multinational engineering company Siemens had paid corrupt officials in multiple nations millions of dollars to secure contracts. Siemens put compliance procedures in place to stop similar situations in the future and paid over \$1.6 billion in fines as part of anti-corruption initiatives. This instance

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<sup>6</sup> Bribery and Corruption: Definition and Process, September 12, 2024, Bribery And Corruption: Definition And Process ([financialcrimeacademy.org](http://financialcrimeacademy.org))

emphasizes how crucial responsibility and openness are to stopping unethical behaviour.

Example: A public official demanding extra money to issue a document, such as a permit or certificate, more quickly than the normal processing time. The payment is not a legitimate fee but a bribe to get the work done faster.

In all these cases, the common thread is the misuse of power and authority for personal advantage, at the expense of fairness, transparency, and the public good. Each type of corruption, whether small or large in scale, erodes trust in public institutions and weakens the rule of law.

The effects of corruption and bribery can be devastating, both in society and in business, as they hinder economic development and disrupt fair competition. To combat these practices, many national and international laws have been enacted, aimed at reducing corruption and bribery and promoting a more just and equitable society.

### **III. DIFFERENCE BETWEEN ANTI-BRIBERY AND ANTI-CORRUPTION**

Giving or accepting a bribe, trying to bribe a foreign official, or failing to stop someone else from giving a bribe on your organization's behalf are all illegal under anti-bribery laws. This implies that in the event that a third party tries to bribe public officials while representing your organization, you will be held responsible. Anti-bribery and anti-corruption policies are comparable. They forbid giving money to foreign public officials or state-owned organization executives in exchange for preferential treatment. Moreover, payment involves more than simply cash. Expensive dinners, luxurious travel, and luxury vehicles may all be subject to anti-corruption legislation.<sup>7</sup>

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<sup>7</sup> Jessica Donohue, What is anti-bribery and corruption compliance?, November 18, 2022, What is anti-bribery and corruption compliance? (diligent.com)

## IV. UNDERSTANDING ANTI-CORRUPTION LAWS

Every country has its own anti-corruption laws to prevent bribery and corruption comply individuals and entities to act fairly. The following are some examples of anti-corruption laws

### A. The Prevention Of Corruption Act, 1988-

#### **Background:**

Prevention of Corruption Act, 1947: The Prevention of Corruption Act, of 1947 was passed in the post-independence era to combat corruption in the public sector. This act outlined numerous corrupt activities and stipulated punishments for violators. But as time went on, it was believed that the act lacked fangs and required considerable revisions to be more successful.

The Prevention of Corruption Act, of 1988 was passed in response to the demand for stronger anti-corruption legislation. The prior legislation was updated and changed significantly by this act. It strengthened the penalty for corrupt behaviour, created new corruption-related offences, and broadened the definition of public personnel.<sup>8</sup>

#### **Objective: -**

**Preventing Corruption:** The main goal of the legislation is to stop corruption among public servants, which includes government employees, law enforcement personnel, and those working in public offices. Its goal is to dissuade corrupt activities by punishing those found guilty with severe consequences.

**Penalties for Corruption:** The purpose of the legislation is to penalize those who engage in corrupt practices, such as accepting bribes, receiving illicit pleasure, and abusing government positions for private benefit.

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<sup>8</sup> Harshavardhan Prakash Deshmukh, Legislative History, Object And Scope Of The The Prevention Of Corruption Act, 1988, Definitions Of Public Servant And Public Duty, <https://www.legalserviceindia.com/legal/article-13714-legislative-history-object-and-scope-of-the-the-prevention-of-corruption-act-1988>

**Promotion of openness:** By making corrupt activities that go against the values of honesty and integrity illegal, it seeks to encourage accountability and openness in public administration and governance.<sup>9</sup>

India's anti-corruption law consists of 31 sections divided into 5 chapters, and it prescribes penalties for both giving and receiving bribes. The Act outlines corruption in its various forms, such as bribery, abuse of power, and unlawful enrichment. It applies specifically to public servants, including those in government and public sector enterprises, who engage in corrupt activities. However, there is no specific law in India that addresses bribery within the private sector.<sup>10</sup>

**Section 7 of the PCA, 1988:** According to this section, it is illegal for a public official to accept, obtain, or seek to obtain any undue advantage from a person or third party. The punishment for this offense is a fine and three to seven years in jail<sup>11</sup>

The Supreme Court ruled in *P. Satyanarayana Murthy v. The District Inspector of Police* (2015) that the use of dishonest or illegal means, or abusing one's position as a public servant to obtain any valuable item or financial advantage, cannot be deemed to have been proven in the absence of evidence of a demand for illegal gratification.<sup>12</sup>

## B. EU ANTI-CORRUPTION LAW

### Background: -

The 1997 Convention on the combating of corruption involving EU and Member State authorities;

The Council Framework Decision of 2003 about the fight against corruption in the private sector, which makes bribery—both active and passive—illegal;

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<sup>9</sup> Harshavardhan Prakash Deshmukh, Legislative History, Object And Scope Of The The Prevention Of Corruption Act, 1988, Definitions Of Public Servant And Public Duty, <https://www.legalserviceindia.com/legal/article-13714-legislative-history-object-and-scope-of-the-the-prevention-of-corruption-act-1988>

<sup>10</sup> Prevention Of Corruption Act, 1988 , 15<sup>th</sup> September 2023  
<https://www.freelaw.in/legalarticles/Prevention-of-Corruption-Act-1988>

<sup>11</sup>Yashraj@2000, Anti-Corruption Laws in India with Recent Judicial Pronouncements, <https://www.legalserviceindia.com/legal/article-9085-anti-corruption-laws-in-india-with-recent-judicial-pronouncements-a-complete-guide.html>

<sup>12</sup> Mahawar, Sneha. "Prevention of Corruption Act, 1988." *iPleaders*, 24 November 2022, <https://blog.ipleaders.in/prevention-of-corruption-act/>. Accessed 13 October 2024.



the Council Decision from 2008 creating a contact-point network to coordinate anti-corruption measures;

Using criminal law provisions, Directive (EU) 2017/1371 (the "PIF Directive") aimed to combat fraud that jeopardizes the financial interests of the EU.<sup>13</sup>

**Objective: -**

- Measure state compliance and implementation of international anti-corruption norms in Europe;
- Investigate whether anti-corruption laws, policies, and practices adopted by EU states are independently influenced by international law;
- Identify patterns of variation in state compliance and implementation, whether cross-national or across sectors and issue areas and,
- Investigate the factors that explain significant variation across states or sectors.<sup>14</sup>

**C. IACAC**

**Background: -**

Adopted in 1996 under the framework of the Organization of American States (OAS), the Inter-American Convention against Corruption has been ratified by 33 member states and signed by 34 member states. Barbados is yet to ratify. In March 1997, the convention came into effect. After the OAS Charter, it was the first international legal framework addressing corruption and the most ratified convention in the hemisphere. The importance of the measures taken by each of the parties involved—individual nations, the commercial sector, civil society, and the international community—is emphasized by the Convention.

The main inter-American legal tool for extradition in cases involving corruption, interstate cooperation and assistance in obtaining evidence and pursuing other

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<sup>13</sup> Matilde Bellingeri, *Combating Corruption in EU Legislation*

<https://eucrim.eu/articles/combating-corruption-in-eu-legislation>

<sup>14</sup> Dia Anagnostou, *Background report on international and European law against corruption*, Dec 2014, <https://www.againstcorruption.eu/publications/d10-1-background-report-on-international-and-european-law-against-corruption>

procedures required to support the investigation and prosecution of corrupt acts, and the identification, tracking, securing, seizing, and confiscation of assets acquired from, or used in the commission of corrupt crimes are all facilitated by the Convention.<sup>15</sup>

#### **D. US Anti-corruption Act**

##### **Background: -**

Early in the 1970s, it was discovered that American corporations were widely bribing foreign public officials, which led to the enactment of the FCPA. The FCPA was designed to address the issue, level the playing field for American companies, and restore public trust in the market's integrity by putting an end to American wrongdoing overseas.

The two main components of the FCPA are the accounting provision, which is meant to keep companies from concealing corrupt payments and to guarantee that the Securities and Exchange Commission (SEC) and shareholders are given a true picture of the company's financial situation, and the anti-bribery provision.<sup>16</sup>

##### **Objective: -**

**Preventing Bribery:** In order to acquire or keep business, U.S. corporations, their employees, and foreign subsidiaries are not allowed to provide, pay, or promise anything of value to foreign government officials.

**Encouraging Transparency:** Under the FCPA, American publicly traded corporations are required to keep accurate books, records, and accounts that accurately reflect their transactions.

Let's delve into the details of these global and national anti-bribery and anti-corruption laws, focusing on their impact on corporate compliance:

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<sup>15</sup> The Inter-American Convention Against Corruption, February 19, 2014  
<https://2009-2017.state.gov/p/wha/rls/221783.htm>

<sup>16</sup> Julie Mendel, Foreign Corrupt Practices Act (FCPA): Background & History, September 29, 2020  
<https://blog.webce.com/article/foreign-corrupt-practices-act>

## **V. GLOBAL ANTI-CORRUPTION LAWS**

### **A. OECD Anti-Bribery Convention**

The OECD Anti-Bribery Convention, established to combat corruption globally, specifically targets the "supply side" of bribery—those offering bribes, whether businesses or individuals, in cross-border transactions. Signed in 1997 and enforced by 1999, it obligates the signatory countries to criminalise bribery of foreign public officials. Businesses engaged in international dealings must ensure they comply with these legally binding regulations, as the Convention focuses on preventing corrupt practices in business transactions across borders.

### **B. United Nations Convention Against Corruption (UNCAC) (2003)**

The UNCAC, the only legally binding international anti-corruption treaty, was ratified by the UN General Assembly in 2003 and came into effect in 2005. It recognises both the preventative and punitive dimensions of corruption and addresses international cooperation and the recovery of corrupt proceeds. The UNCAC Secretariat, located in the UN Office on Drugs and Crime (UNODC), leads international efforts to prevent corruption, and its provisions are applied to prevent corrupt practices and ensure legal enforcement across borders.

Companies should be aware of any changes to regulations in their regions of activity, even though some of the most recent OECD recommendations are consistent with current trends in global anti-corruption policy. Additionally, businesses working in high-risk areas for public corruption ought to assess the Good Practice Guidelines on Internal Controls, Ethics, and Compliance provided by the OECD, which are included in Annex II of the 2021 Anti-Corruption Recommendation. It offers thorough instructions to businesses on how to set up risk-based anti-bribery and corruption compliance programs, such as:

The board and senior management's "strong, explicit, and visible support and commitment" –also referred to as the "tone from the top" –as well as the outward communication of ethical and compliance culture<sup>17</sup>

### **C. Foreign Corrupt Practices Act (FCPA)**

The FCPA of 1977 is a landmark U.S. federal law that prohibits U.S. citizens and businesses from bribing foreign officials to gain unfair advantages in business transactions. It covers both direct and indirect payments made to influence official decisions and requires corporations to maintain accurate records and internal controls. Violations of this act can lead to severe legal penalties for companies and individuals, extending to multinational firms with U.S. ties or those listed on U.S. stock exchanges.

The Act is primarily composed of two sections: standards for accounting transparency and anti-bribery prohibitions. Its extraterritorial reach, which holds American businesses and persons as well as foreign companies listed on American stock exchanges liable for corrupt actions globally, accounts for its global relevance.

Businesses should use thorough compliance plans and software programs, such as the following, to reduce risks:

- a) Internal Controls: To identify and stop bribery, clearly define policies and procedures.
- b) Education and Awareness: Consistent instruction on anti-bribery legislation and corporate practices for staff members and outside parties.
- c) Risk Assessments: To find and fix possible weak points, conduct regular risk assessments.

In order to determine potential risks connected to target organizations, FCPA due diligence is essential. In order to prevent taking on liabilities, this entails examining

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<sup>17</sup> Updates to OECD Anti-Bribery Recommendation call on countries to increase cooperation and give credit for effective compliance programmes, December 1, 2021, Updates to OECD Anti-Bribery Recommendation call on countries to increase cooperation and give credit for effective compliance programmes | Insights | Ropes & Gray LLP (ropesgray.com)

the target's prior business practices, compliance initiatives, and any history of regulatory infractions<sup>18</sup>.

## VI. CROSS BORDER CORPORATION

This point was emphasized by Nicole Argentieri, the Acting Assistant Attorney General for the Criminal Division of the Department of Justice (DOJ), who stated that "one of the most important developments in white collar enforcement over the last decade is coordination among international law enforcement partners." When the DOJ passed the Policy on Coordination of Corporate Resolution Penalties, also referred to as the "Anti-Piling On Policy," in May 2018, it publicly acknowledged the advantages of coordinating multi-jurisdictional resolutions.

In at least eighteen FCPA settlements after the DOJ's adoption of the Anti-Piling On Policy in May 2018, the SEC and/or DOJ have credited sums paid – or expected to be paid – to foreign regulators. This amounts to about 29% of all FCPA settlements with businesses.

US officials have collaborated with numerous international enforcement agencies, such as the Special Fraud Office (SFO), the Parquet National Financier of France, and the Public Prosecutors' Office in the Netherlands, to obtain these cross-border agreements. Additionally, the DOJ has made it clear that it intends to keep fostering ties with law enforcement organizations in newly established areas.

In August 2023, the Department of Justice collaborated with Colombian authorities to execute its inaugural overseas bribery resolution. Conversely, US authorities significantly more frequently than those in any other country entered into coordinated agreements with their Brazilian counterparts. From May 2018, 61% of settlements coordinated with foreign regulators engaged Brazilian authorities.

As an illustration, GOL Linhas Aéreas Inteligentes S.A. (Gol) consented to settle FCPA charges pertaining to a bribery conspiracy involving Brazilian politicians by paying the SEC and DOJ \$157 million. Gol will also give the AGU and CGU \$3.4 million as

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<sup>18</sup> Understanding the Foreign Corrupt Practices Act in Indian Context, September 24, 2024, <https://complinty.com/blog/compliance/understanding-the-foreign-corrupt-practices-act-in-indian-context>

part of the settlement. To account for the fines levied in Brazil, the SEC and DOJ offset \$1.7 million apiece, for a total of \$3.4 million.<sup>19</sup>

## VII. UN GLOBAL FRAMEWORK AND COLLECTIVE BUSINESS ACTION

Corruption significantly impacts businesses by increasing costs, reducing revenues, and exposing them to legal and reputational risks. The UN Global Compact calls upon businesses to tackle corruption in all forms, including extortion and bribery, through its Tenth Principle. This initiative encourages collaboration between businesses, governments, civil society, and international organizations to create a fairer, more transparent global economy. Partnerships with organizations like Transparency International, WEF Partnership Against Corruption Initiative (WEF-PACI), and the Basel Institute on Governance emphasize the need for unified business action to combat corruption collectively. Even while a single company's initiatives are important, they cannot eradicate corruption. To combat corruption collectively, companies need to collaborate with governments, non-governmental organizations, community-based groups, and other enterprises.

Companies can:

- Develop a deeper comprehension of the problem related to corruption
- Combine expertise with technical and financial resources to make a bigger difference
- Provide answers that people find more believable, palatable, and long-lasting
- Ensure that there is fair competition and an even playing field for all parties involved
- Establish a more secure and supportive business climate

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<sup>19</sup> Anita B. Bandy, Alessio Evangelista, Mayra C. Suárez, and Devin J. Benavidez, Commercial, Professional Perspective - Cross-Border Cooperation: Coordinated Anti-Bribery Resolutions & Anti-Piling On Policy, January 2024, <https://www.bloomberglaw.com/external/document/X49602NO000000/commercial-professional-perspective-cross-border-cooperation-coo>

- In areas and Industries that are susceptible and where the industry or government-led laws are weak, bolster the current anti-corruption initiative

Advancing Collective Action Against Corruption through Global Compact Local Networks is a three-year project that the UN Global Compact initiated in July 2021. The initiative, Scaling up Anti-Corruption Collective Action within Global Compact Local Networks, intends to develop and enhance the following activities:

Promoting Uniting against Corruption: A Playbook on Anti-Corruption Collective Action's adoption as a worldwide tool, To include the private sector's voice in the global anti-corruption agenda, the UN Global Compact is expanding its engagement in public-private policy discussion by empowering 10 GCLNs to spearhead and oversee local and regional Collective Action programs.<sup>20</sup>

## VIII. NATIONAL ANTI-BRIBERY AND ANTI-CORRUPTION LAWS IN INDIA

### A. Prevention of Corruption Act, 1988 (PCA)

The PCA is India's primary anti-corruption law, focusing on curbing bribery among public officials. Under the 2018 Amendment, the law also holds commercial organizations accountable if any associated person provides undue advantage to a public servant. This makes businesses responsible for ensuring compliance with anti-bribery policies and puts in place penalties for non-compliance. Companies can defend themselves by proving they have adequate procedures to prevent corrupt practices by their employees or associates.

Key corporate compliance measures under PCA:

- Definition of commercial organization: Any entity, incorporated in India or abroad, conducting business in India.
- Associated person: Any individual performing services for or on behalf of the organization.

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<sup>20</sup> Taking Collective Action for Anti-Corruption  
<https://unglobalcompact.org/take-action/action/anti-corruption-collective-action>

- Defense: Businesses must demonstrate that they have procedures in place to prevent bribery.

#### CASE LAW:-

- **Union of India v. Vijay Madanlal Choudhary 2022 SC 633**

In interpreting Section 3 of the Prevention of Money Laundering Act, 2002, the Hon'ble Supreme Court of India ruled that it is not necessary to show the property as untainted in order to constitute an offence under the PMLA; therefore, the word "and" for demonstrating the proceeds of crime as untainted property is construed as "or" as it must not undermine the fundamental goal of the Act.

The court further argued that, in order for a crime to be classified as covered by the PMLA, merely engaging in or aiding in the activity of obtaining the proceeds of crime constitutes sufficient and reliable evidence, and that the property need not be shown to be untainted. Otherwise, the individuals involved in criminal syndicates would be able to keep the proceeds of crime for years to come and enjoy their fruits without any action from law enforcement.<sup>21</sup>

#### **B. Bhartiya Nyaya Sanhita (BNS)**

The BNS, a reform of India's criminal code, tightens laws related to corruption, particularly for public servants. Section 223 plays a crucial role in raising awareness about legal obligations, and Section 447 outlines penalties for fraud involving large sums or significant public impact. For fraud exceeding Rs. 10 lakhs or 1% of a company's turnover, the penalty includes imprisonment for 6 months to 10 years and a fine equal to or exceeding the amount involved.

#### CASE LAW: -

- **State v. Hemendhra Reddy**<sup>22</sup>

The Divisional Bench, which included Justices JB Pardiwala and Surya Kant, determined that the investigating agency might continue to look into the case even

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<sup>21</sup> Anti-Corruption Laws in India with Recent Judicial Pronouncements, supra note 10

<sup>22</sup> State Through Central Bureau Of ... vs Hememdhra Reddy, 27274 / 2017



after the final report was presented to the magistrate and approved. Furthermore, conducting additional research does not require that the order accepting the final report be reviewed, recalled, or revoked beforehand.

The Court ruled that additional inquiry does not fall under the purview of double jeopardy as defined by Article 20(2) and cannot be equated with prosecution and punishment. Furthermore, under Section 173(8) of the CrPC, there is no requirement to hear the accused when evaluating a request for additional investigation. The courts also noted that the Superintendent of Police or a superior officer must consider the facts and determine whether an investigation into the allegations is warranted before initiating the type of investigation specified in Section 17 of the PC Act, 1988.

### **C. Income Tax Act, 1961**

Corporate compliance under the Income Tax Act is governed by several provisions:

- Section 37(1) prohibits businesses from deducting expenses related to illegal or corrupt practices.
- Section 271(1)(c) enforces penalties for misreporting income, deterring businesses from using tax evasion tactics linked to corruption.
- Transfer Pricing Regulations under Section 92 ensure that transactions between related entities, domestic or international, are conducted at arm's length to prevent manipulation of profits or expenses.

### **D. Benami Transactions (Prohibition) Act, 1988**

This act targets benami transactions, which involve purchasing property in the name of someone else to conceal corrupt income. Companies involved in such transactions face severe penalties under Section 53. To ensure compliance, companies must maintain accurate records and disclose the true ownership of their assets, preventing the use of corporate entities for fraudulent activities.

### **E. Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015**

This act addresses undisclosed foreign assets and income, a key avenue for corrupt activities. The Black Money Act mandates the disclosure of foreign holdings and imposes steep penalties for non-compliance, including fines of up to 3000% of the tax owed and prison terms of up to 7 years. This law reinforces India's efforts to curb the flow of illicit funds overseas, pushing corporations to enhance transparency in cross-border financial dealings.

### **F. Fugitive Economic Offenders Act, 2018 (FEOA)**

The FEOA targets individuals who flee the country to escape prosecution for financial crimes, including fraud and corruption. Corporations must enforce strong corporate governance and due diligence processes to avoid being linked with fugitives. Non-compliance can result in the seizure of company assets and other legal consequences. Businesses need to implement internal controls, conduct regular audits, and ensure compliance with anti-corruption regulations to avoid potential entanglement with economic offenders.

Together, these laws create a comprehensive framework that mandates corporate compliance with anti-corruption and anti-bribery regulations, ensuring businesses take active measures to prevent and address corrupt practices.

#### **CASE LAW: -**

- **State of Telengana v. K. Shanthamma SC 192**

The Hon'ble Supreme Court of India ruled in the case that only recovering money from the accused will not result in his conviction under the Prevention of Corruption Act, 1988, and that "Demand for Bribe" and "Its Acceptance by the Public Servant" are necessary requirements for establishing a case against him.

The Prosecution Witness (PW)-I in this case did not make the demand at the time of the trap, and he has since improved his statements during the main examination. This,

the court noted, does not prove beyond a reasonable doubt that the accused made the demand for the bribe.<sup>23</sup>

## IX. CASES AND ENFORCEMENT ACTION

Cases and Enforcement Measures:-

### A) GlaxoSmithKline and Unilever

Unilever and GlaxoSmithKline were the targets of major court lawsuits in 2023 over allegations of bribery and corruption. Both businesses paid hefty fines and came under investigation from authorities. These incidents demonstrate how important it is to ensure that multinational firms are subject to anti-corruption laws and that international norms are followed.<sup>24</sup>

The enforcement measures against GSK and Unilever highlight the international community's dedication to combating corruption and advancing corporate transparency. These incidents serve as a reminder of how crucial it is to uphold strict compliance policies and anti-corruption legislation.

**Lesson Learned:** The significance of business ethics and compliance systems is brought home by this instance. To avoid such problems, companies should promote a culture of moral behaviour and make sure that the law is followed. It's not just about avoiding legal trouble; it's also about upholding the company's brand and the public's trust, and ultimately, it's about stopping problems before they start.

a) Uphold Business Ethical Standards b) Comply with Law Regulations

Due to claims of deceptive medicine pricing and marketing strategies, GSK reached a \$3 billion settlement with the US government. GSK entered a guilty plea to allegations of violating the law by improperly promoting specific prescription medications and neglecting to disclose safety information. The False Claims Act subjected it to further civil obligations.

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<sup>23</sup> Anti-Corruption Laws in India with Recent Judicial, supra note 10

<sup>24</sup> <https://www.legalserviceindia.com/legal/legal/article-18151-anti-corruption-and-bribery-laws-in-national-and-international-business>

Due to the case, GSK was compelled to establish strict internal controls, alter its business procedures, and take other compliance-related actions.<sup>25</sup>

## **B) Samsung Corporation**

### **Synopsis:**

The son of former chairman Lee Kun-hee, Lee Jae-yong is the de facto boss of Samsung Group. He was accused of bribery, embezzlement, and perjury in 2017. The incident was connected to the larger political corruption scandal that resulted in Park Geun-hye's impeachment as president of South Korea. Choi Soon-sil, Park's close ally, oversaw foundations that Lee was accused of receiving bribes totalling 43 billion won (about \$36 million) in exchange for political favours. In order to strengthen Lee's grip over the conglomerate, it was believed that the favours involved getting government approval for a merger between Samsung affiliates Samsung C&T and Cheil Industries.

### **Result:**

Lee Jae-Yong was found guilty of bribery in August 2017 and given a five-year prison sentence. Nevertheless, the Seoul High Court postponed and lowered his sentence in February 2018, allowing him to be released from prison after serving a year. After giving the matter more consideration, the Supreme Court of South Korea returned it to a lower court for a new trial in 2019. Lee was once more given a prison term in 2021, but because of his importance to South Korea's economy, he was later granted parole.<sup>26</sup>

**Lesson Learned:** - When conducting business in Europe, it is crucial to safeguard intellectual property and be aware of international trademark regulations, as demonstrated by the Samsung v. Apple patent dispute. Key takeaways from this case study for firms are as follows:

- a) Conducting comprehensive patent searches prior to venturing into a new market is crucial: -

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<sup>25</sup> Kreller Group, Lessons Learned From the GSK Whistleblower Case, November 22, 2023, <https://www.kreller.com/post/lessons-learned-from-the-gsk-whistleblower-case-a-landmark-in-corporate-ethics-and-legal-compliance>

<sup>26</sup> Samsung India Electronics Pvt. Ltd. & ... vs Farooq Khan & Anr. on 2 July, 2019 <https://www.bbc.com/news/business-55674712>

Apple's design patent was infringed due to Samsung's lack of a comprehensive patent search before releasing their Galaxy tablet in the European market. This error resulted in expensive legal disputes, bad press, and income loss.

- b) Businesses must be well-versed in the intellectual property rules of the nations in which they conduct business: -

Intellectual property laws differ from nation to nation, therefore companies operating abroad should be informed of the particular rules and legislation in those areas. Design patents, which are exclusive to the US legal system, were at the crux of the Samsung v. Apple case.

- c) The importance of taking preventative steps to safeguard intellectual property, such as registering patents

### **C) Siemens AG (2008)**

#### **Overview:**

A significant bribery scandal engulfed the German multinational firm Siemens AG in 2008. Siemens was found to have engaged in extensive bribery to obtain contracts in a number of nations, including Venezuela, Argentina, and Nigeria, according to investigations. The business acknowledged that it had paid bribes totalling over €1.3 billion over a 20-year period.

**Result:** Siemens consented to settle fines with American and European authorities totalling more than \$1.6 billion. A number of senior executives resigned as a result of the incident, which also caused major adjustments to the company's compliance procedures.<sup>27</sup>

**Lesson Learned:** - Hope that the Siemens case will be remembered and utilized to establish genuine compliance programs, as it is a symbol of the past. In the absence of effective countermeasures, there is a possibility that corruption will continue to spread like a virus, with businesses copying one another.

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<sup>27</sup> United States v. Siemens Aktiengesellschaft 08-CR-367-RJL

<https://www.justice.gov/opa/pr/siemens-ag-agrees-pay-16-billion-resolve-foreign-corrupt-practices-act-violations>

Another lesson is that the US is the only country with a true justice system that takes corruption seriously. The US Department of Justice is the only agency that has been able to adequately penalize businesses.<sup>28</sup>

#### **D) Eni S.p.A and Shell (2011-2018)**

Eni and Shell signed an agreement in 2011 to buy OPL 245 from Malabu Oil and Gas, a business that former Nigerian oil minister Dan Etete covertly controlled. The corporations paid \$1.3 billion for the block, but it was later discovered that instead of helping the Nigerian people, the majority of the funds went to dishonest government officials and middlemen, including Etete himself.

Several high-ranking officials from Eni and Shell were accused of corruption and bribery by Italian prosecutors in 2018. Among them were Claudio Descalzi, the CEO of Eni, and Malcolm Brinded, the former head of upstream at Shell. Executives from Eni and Shell allegedly knew the money would be used for bribes, according to investigations conducted in Italy, Nigeria, the Netherlands, and other countries.

Both businesses insisted that they paid the Nigerian government and had no control over what happened to the money after that, and they denied any wrongdoing.<sup>29</sup>

#### **Lesson Learned: -**

- a) Extensive diligence and openness in transactions
- b) Accountability and Corporate Governance
- c) Ethics and Prolonged Business Effects Adherence to Global Anti-Corruption Regulations

#### **E) Glencore (2022)**

Overview: Allegations of extensive bribery and corruption in several countries were made against Glencore in 2019, a multinational commodity trading and mining firm with its headquarters in Switzerland. The company was under investigation for

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<sup>28</sup> Bertrand Venard, Lessons from the massive Siemens corruption scandal one decade later, December 13, 2018, <https://theconversation.com/lessons-from-the-massive-siemens-corruption-scandal-one-decade-later-108694>

<sup>29</sup> <https://www.bbc.com/news/world-europe-56434890>

allegedly using bribery to obtain contracts and special treatment in resource-rich areas, especially in South America and Africa. These claims were linked to potential infractions of anti-corruption statutes, such as the UK Bribery Act and the US Foreign Corrupt Practices Act (FCPA).

Even though the inquiry is still ongoing, Glencore has suffered significant harm to its reputation, and the case has increased public scrutiny of the mining sector's activities in developing nations.

The case brought to light more widespread worries about corruption in the extraction sectors, especially in countries with abundant natural resources but weak governments, where international corporations can have a significant effect on policy decisions.

Glencore was held liable to pay over \$1.5 billion as fines to U.S., United States, United Kingdom, and Brazilian authorities.<sup>30</sup>

**Lesson Learned: -**

- a) Bolstering the Code of Conduct and initiating a worldwide education and awareness initiative;
- b) Creating a new, independent compliance department and appointing Daniel Silver, who will take over as head of compliance in 2020;
- c) Putting in place a business partner management program that uses end-to-end controls to monitor interactions and drastically reduces the usage of third-party middlemen;
- d) Putting in place testing and monitoring procedures, such as data analytics, to evaluate the efficacy of controls.<sup>31</sup>

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<sup>30</sup> Glencore v. Colombia (III) Glencore International A.G. v. Republic of Colombia (III) (ICSID Case No. ARB/21/30)

<https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes>

<sup>31</sup> Matt Kelly, Lessons From Glencore Settlement, May 26, 2022, <https://www.radicalcompliance.com/2022/05/26/lessons-from-glencore-settlement/>

## F) Volkswagen Emissions Scandal (Dieselgate) 2015

**Overview:** A controversy regarding the deployment of "defeat devices" in its diesel-powered vehicles rocked Volkswagen AG in 2015, the biggest carmaker in the world at the time. These devices were software programs that were added to cars in order to rig emissions tests so that the cars would pass the regulations even if they were producing pollutants at substantially higher levels when driving normally.

When Volkswagen received a notice of violation of the Clean Air Act from the US Environmental Protection Agency (EPA) in September 2015, the matter became public. Volkswagen was found to have designed the engine control unit (ECU) of their diesel cars to switch on pollution controls only while the vehicles were being tested in a lab, and to turn them off when the vehicles were being driven in an actual environment. Models of Volkswagen and Audi with 2.0- and 3.0-litre TDI diesel engines were among the impacted automobiles. The vehicles satisfied European and American emissions regulations in lab conditions, but when driven in the real world, they were discovered to leak nitrogen oxides (NOx) up to 40 times more than what was allowed.<sup>32</sup>

### **Lesson Learned: -**

- a) Lesson 1: Making poor decisions might result from not considering the potential repercussions of your choices: The possibility of being apprehended by the authorities was not taken into consideration, or at least was not given enough weight, by whoever at Volkswagen was in charge of this vast cheating.
- b) Lesson 2: Tactical actions cannot improve an inadequate strategy: The intriguing query is why a well-known automaker is engaging in such extensive, systemic dishonesty.
- c) Lesson 3: Events that appear far away may have an impact on your company: It would seem that Volkswagen's rivals in Europe had every right to rejoice

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<sup>32</sup> <https://www.bbc.com/news/business-34324772>



following the market leader's precipitous decline. The situation is actually the reverse, especially for German automakers.

- d) Lesson 4: It is less expensive to invest in strategic thought than to pay for strategic failure.

Avoiding strategic failure is not guaranteed. On the other hand, it is entirely possible to prevent an epic-scale strategic disaster, as Volkswagen recently encountered. It necessitates that decision makers be taught in strategic thinking at all levels where decisions are made. This entails having the ability to find and evaluate possibilities logically and to anticipate the effects of those choices.<sup>33</sup>

### **Increased Global Collaboration:**

The growing emphasis on international collaboration in anti-corruption initiatives is a noteworthy trend. In an effort to combat transnational corruption and raise the efficiency of enforcement measures, nations and international organizations are collaborating more closely. The goal of increased collaboration is to make it easier to exchange knowledge, assets, and effective strategies in the fight against corruption worldwide.

Addressing the challenges of cross-border corruption requires international cooperation, and recent events show a rising commitment to cooperative efforts in the fight against bribery and corruption<sup>34</sup>.

### **Guidance**

Reducing the risk of fraud and corruption in an organization can be greatly impacted by good governance processes. All members of an organization can be more assured that they understand their responsibilities with relation to financial reporting and compliance when explicit, documented policies, processes, and protocols are in place. Effective governance procedures can stop dishonest or corrupt actions before they

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<sup>33</sup> Milon Gupta, *Five Strategic Lessons from the Volkswagen Emissions Scandal*, 24 September 2015, <https://www.strategicthinking.eu/five-strategic-lessons-from-the-volkswagen-emissions-scandal/>

<sup>34</sup> Adv. Dipika D. Gaikwad and Adv. Saurabh K. Todkar, *Anti-Corruption And Bribery Laws In National And International Business*, <https://www.legalserviceindia.com/legal/article-18151-anti-corruption-and-bribery-laws-in-national-and-international-business.html>

start by defining responsibilities precisely, establishing attentive supervision, and removing chances for misuse. These procedures also promote accountability and openness inside the company. Additionally, they aid with the early detection of any unusual or suspect activity before it causes expense or harm.<sup>35</sup>

The board should oversee the anti-bribery program's operation, making sure it gets regular reports from management and the findings of internal and external audits, and directing that any required adjustments are made.

In order to guarantee the effectiveness of the anti-bribery program, the board's participation is crucial in establishing a controlled environment. The collection of guidelines, procedures, and organizational frameworks that serve as the foundation for implementing internal control throughout the company is known as the control environment. The environment in which the anti-bribery program functions is provided by the control environment. The anti-bribery program won't be able to function properly without an appropriate organizational structure and processes in place.

An anti-bribery commitment, a procedure to find and abide by anti-bribery and associated regulations, a clear delineation of roles for the anti-bribery program, and ensuring that the program takes into consideration the organisational structure of the company all contribute to the control environment.

## **X. BEST PRACTICES AND POLICIES THAT CAN ADOPT ROBUST ANTI- CORRUPTION LAWS**

### **A. Whistle-Blowing**

Workers should be urged to report any infractions of applicable policies, codes of conduct, potential legal and regulatory infractions, and other misbehavior as soon as possible. For that reason, the company needs to set up clear reporting procedures and channels (MENA FCCG 16 October 2020) for any dubious behavior and make sure that these procedures are properly shared.

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<sup>35</sup> Jo Ellis, How corporate governance can prevent fraud and corruption, [thecorporategovernanceinstitute.com](http://thecorporategovernanceinstitute.com)

Support "from the top" is crucial for any successful whistleblowing system. This includes vocal and practical endorsement (by increasing awareness and making supportive remarks, for example) from the board, executive directors, and senior management.

A clear whistleblowing policy should be in place at the company. It might be included in the entity's Code of Conduct or it could be a stand-alone policy. Any whistleblower policy ought to be unambiguous, understandable, and straightforward. Here are some guidelines for what ought to be in a policy: A commitment to educating staff members at all organizational levels about whistleblowing laws and the organization's policy.-A clear explanation of what whistleblowing is and how it relates to the organization.-A clear explanation of the organization's procedures for handling whistleblowing, which can be communicated through training.

In addition, the organization needs to keep track of the quantity and type of disclosures made by whistleblowers, as well as the date and content of any feedback they receive. Finally, it should regularly poll whistleblowers to find out how satisfied they are. Monitoring any changes to the conditions surrounding whistleblowers is also essential. To rule out any retaliation, for instance, the relocation or drop in the whistleblowers' performance rating needs to be looked into.<sup>36</sup>

## **B. Third Parties**

Relationships with third parties are those in which the organization may be held accountable or face reputational damage should the third party take part in dishonest or unlawful activities.

Activities that fall under the purview of this definition encompass a variety of activities such as joint ventures, franchising of the organization's characteristics, payment processing services, services rendered by affiliates and subsidiaries, and the use of independent consultants.

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<sup>36</sup> MENA FCCG , Practical Guide to Implementing an Anti-Bribery and Corruption (ABC) Program, October 2020,<https://menafccg.com/wp-content/uploads/2020/09/Practical-Guide-to-Implementing-an-Anti-Bribery-and-Corruption-Program-English-.pdf>

Dealing with third parties who are known or logically suspected of offering or accepting bribes is not something the company should do. In order to achieve this, the company should implement the proper MENA FCCG 19 October 2020 due diligence procedures, such as integrity, corruption, and name screening, to third parties; new third parties cannot be engaged with until these processes have been completed and approved. Additionally, the due diligence process's outcomes must to be suitably documented and recorded<sup>37</sup>.

### **C. Audits And Reviews**

Every year, the Committee and/or Champion should evaluate the ABC Policy and other important documents. In addition, these must to be examined as needed if a significant shift in the company's operations is suspected. The impact of these modifications should be assessed case-by-case by the Committee/Champion and the business lines, and corrective action should be implemented as needed<sup>38</sup>.

### **D. Internal Financial Controls**

Internal controls are typically created to offer a reasonable level of assurance regarding the effectiveness of operations, the accuracy of financial reporting, and the entity's compliance with legal and regulatory requirements. Segregation of roles, transaction authorization, record-keeping, operational supervision, physical security, and information technology security are a few examples of internal controls.<sup>39</sup>

### **E. Risk Assessment**

The identification and evaluation of bribery and corruption concerns is crucial to bolstering the efficacy of the ABC control structure. The method of assessing the danger of corruption is a commercial procedure rather than an inquiry. The purpose of the risk assessment is to evaluate the control environment in order to reduce the

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<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Ibid

risk of corruption, not to identify every instance of possible corruption. Instead of being an inquiry, the procedure is more like an audit.

- a) There are four main components to the risk evaluation.
- b) A examination of the company's operations to determine and comprehend the biggest corruption risks it faces. An assessment of the organization's anti-corruption program as it stands right now.
- c) A "gap analysis" comparing the anti-corruption threats identified with the current program.
- d) Suggestions for enhancing the program that take into account best practices and standard operating procedures in addition to what is most realistic for the specific business in terms of attaining compliance.<sup>40</sup>

## XI. CONCLUSION

Even though widespread corruption has historical and cultural origins, it nonetheless poses an economic and political challenge. Inefficiency and injustice are caused by corruption. It is a sign that the political system is not giving much thought to the interests of the general populace. It suggests that private interests are not efficiently channeled by the government's framework. Corruption undercuts the economic objectives of prosperity, eradicating poverty, and creating just and efficient markets.

Political legitimacy and the defense of rights are undermined by corruption. There has been progress in research and policy after twenty years of the worldwide campaign against corruption, but much work still needs to be done. Even if attempts to evaluate corruption are flawed, they have exposed particularly dishonest industries and governments, which has sparked reforms toward openness and more moral behavior in both the public and private spheres. However, the majority of countries continue to obtain failing marks for their efforts to combat corruption<sup>41</sup>.

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<sup>40</sup> Ibid6

<sup>41</sup> Susan Rose-Ackerman and Bonnie J. Palifka, Conclusions, 05 March 2016, <https://www.cambridge.org/core/books/abs/corruption-and-government/conclusions/196AEA73CF79EF77B2956BE6E08BEE28>